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December 3, 2020

Via ECF

The Honorable Joseph F. Bianco
United States District Judge
Eastern District of New York
100 Federal Plaza, Room 1040
Central Islip, New York 11722

Re: United States v. Kenner, 13-CR-607

Dear Judge Bianco,

This office has been appointed as standby counsel to assist Phillip Kenner in his capacity as a *pro se* litigant. Mr. Kenner has asked me to file the attached documents in order to supplement the record with respect to his November 24, 2020 *pro se* motion, filed under ECF docket entry 959.

Attached hereto as Exhibit A is complete set of the written 3500 material provided to Mr. Kenner with respect to John Kaiser. The attached material includes proffer notes and reports labeled 3500-JK-1, 3500-JK-2, 3500-JK-3, and 3500-JK-7.¹

According to Mr. Kenner, he was not furnished with 3500-JK-4, 3500-JK-5, and 3500-JK-6. This appears to be consistent with the Government's directory of 3500 materials, attached hereto as Exhibit B, which lists such material as "intentionally left blank."

Mr. Kenner notes that the 3500 material which *was* produced does not reflect the statements which Mr. Kaiser reportedly made to the Government concerning ongoing fraudulent conduct by Kenneth Jowdy. During the October 28, 2020 court conference, Mr. Kaiser stated that he became aware of such fraud in 2013 or 2014, and that he reported such misconduct to the Government. *See* 10/28/20 Transcript at p. 49 ("I was treating it as

¹ In addition to the attached written 3500 material, I understand that Mr. Kenner was also provided with three recordings, labeled 3500-JK-8, 3500-JK-9, and 3500-JK-10, as reflected on the Government's 3500 list, attached hereto as Exhibit B.

an investigation, just like I was a police officer, and I was uncovering everything. And then I go to the government and say it's a crime what's going down there. He's stealing millions of dollars."); *id.* at 50 ("I was pleading with the government or someone to listen to say get this guy out of here and his family because he's going to steal every single penny.").

In light of the above, Mr. Kenner is respectfully seeking the production of any additional 3500 and/or *Brady* material which was not previously produced by the Government.

Thank you for your consideration.

Respectfully submitted,

/s/

Matthew W. Brissenden

cc: All Counsel (*via* ECF)
Phillip Kenner